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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/417,332	10/13/1999	ROBERT BEDICHEK	TRANS09	7303

7590 01/18/2007
Wagner Murabito & Hao LLP
Two North Market Street
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San Jose, CA 95113

EXAMINER

ELLIS, RICHARD L

ART UNIT	PAPER NUMBER
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2183

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/417,332

Applicant(s)

BEDICHEK ET AL.

Examiner

Richard Ellis

Art Unit

2183

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-2, 3-9, 15-20 remain for examination.
2. The text of those sections of Title 35, US Code not included in this action can be found in a prior Office Action.
3. Claim 17 is rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The scope of meaning of the following terms are unclear:

1. "a branch of target instructions" claim 17; This rejection is maintained from the prior office action, paper number 13, mailed May 20, 2004.

Applicant argues on page 9 of the response, received November 16, 2006, to the paragraph beginning on line 19 of page 13 of the specification in support for this claim terminology. However, the quoted paragraph does not provide any indication as to what is meant by the claim term "a branch of target instructions". The presence of the word "of" connecting "branch" and "target instructions" is the cause of the problem. Nowhere in the cited paragraph is a definition provided for "a branch of target instructions" which is a phrase which has no understandable meaning within the processor art. Had the clause been written "a branch to target instructions" the clause would have made sense within the processor art, because a branch causes processor instruction flow to shift to a target instruction, the target of the branch. Had the clause in the claim been written "branch to target" it would also be supported by the paragraph applicant quotes from the specification, as that paragraph details that the system records the number of times the branch was executed, or the number of times the branch cause the processor to redirect to the target instruction. But it provides no definition for "branch of target".

4. Claims 1, 3, 8-9, and 15 are rejected under 35 USC 102(e) as being clearly anticipated by Babaian et al., U.S. Patent Application Publication US2002/0,092,002 A1.
5. Claims 2, 4-7, and 16-20 are rejected under 35 USC § 103 as being unpatentable over Babaian et al., in view of Lethin et al., U.S. patent 6,463,582.

Babaian et al. and Lethin et al. were cited as a prior art reference in paper number 13, mailed May 10, 2004.

6. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, paper number 13, mailed May 10, 2004.
7. Applicant's arguments filed November 16, 2006, have been fully considered but they are not deemed to be persuasive.
8. In the remarks, applicant argues in substance:
 - A. That: "Applicants point out that the present invention as recited in independent Claims 1, 3, and 8 comprises a dynamic translation process ... The translation process is ongoing and on-the-fly. ... Applicants point out that this is complete different from the cited references, ... There appears to be no recitation regarding ongoing and on-the-fly translation"

This is not found persuasive because applicant's arguments link their "dynamic translation" process to the meaning "ongoing and on-the-fly" and therefore argue that the Babaian et al. reference does not perform "dynamic translation". Applicant's attention is directed to Babaian et al. figure 2, where elements 203 and 204 in the figure are named "Dynamic Binary Translation Process" and "Dynamic Analysis Process" respectively. This figure from Babaian et al. shows that Babaian et al. does indeed disclose a "dynamic translation" process as claims 1, 3 and 8 have been amended to state and therefore show that Babaian et al. continues to read upon the claim language as it presently stands.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD

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FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Richard Ellis whose telephone number is (571) 272-4165. The Examiner can normally be reached on Monday through Thursday from 7am to 5pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eddie Chan, can be reached on (571) 272-4162. The fax phone number for the USPTO is: (703)872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

Richard Ellis
January 10, 2007



RICHARD L. ELLIS
PRIMARY EXAMINER